



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220902-0184]

RTID 0648-XC082

Atlantic Highly Migratory Species; 2023 Atlantic Shark Commercial Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any underharvests from the 2022 fishing year. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

DATES: Written comments must be received by *[insert date 30 days after date of publication in the Federal Register]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0064, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0064 in the search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the Atlantic Highly Migratory Species (HMS) Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Ann Williamson (ann.williamson@noaa.gov) by phone at 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Ann Williamson (ann.williamson@noaa.gov), Guy DuBeck (guy.dubeck@noaa.gov), or Karyl Brewster-Geisz (karyl.brewster-geisz@noaa.gov) at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

Atlantic shark fisheries are managed primarily under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635.

For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accountability measures for underharvests and overharvests. The retention limits, commercial quotas, and

accountability measures can be found at 50 CFR 635.24(a), 635.27(b), and 635.28(b). Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(2), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the **Federal Register**.

2023 Proposed Commercial Shark Quotas

NMFS proposes to adjust the quota levels for the various shark stocks and management groups for the 2023 Atlantic commercial shark fishing year (*i.e.*, January 1 through December 31, 2023) based on underharvests that occurred during the 2022 fishing year, consistent with existing regulations at § 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only for shark management groups that have shark stocks that are declared not overfished and not experiencing overfishing. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2022 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2023 quotas for certain management

groups as shown in Table 1. All of the 2023 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after NMFS considers landings submitted in the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2024 quotas, as appropriate, noting that, in some circumstances, NMFS re-adjusts quotas during the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2022 fishing year for these management groups may be added to their respective 2023 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage (§ 635.27(b)(1)(ii)(C)).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2022 underharvests cannot be carried over to the 2023 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2023 quotas by species and management group are summarized in Table 1 and the description of the calculations for each stock and management group can be found below. All quotas and landings are in dressed weight (dw) metric tons (mt).

Table 1 includes landings data as of July 15, 2022. Final quotas are subject to change based on landings as of mid-October 2022.

Table 1 – 2023 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups

Region or Sub-Region	Management Group	2022 Annual Quota (A)	Preliminary 2022 Landings ¹ (B)	Adjustments ² (C)	2023 Base Annual Quota (D)	2023 Proposed Annual Quota (D+C)	Season Opening Date
Western Gulf of Mexico	Blacktip Sharks	347.2 mt (765,392 lb)	210.9 mt (464,908 lb)	115.7 mt (225,131 lb)	231.5 mt (510,261 lb)	347.2 mt (765,392 lb)	January 1, 2023
	Aggregate Large Coastal Sharks ³	72.0 mt (158,724 lb)	67.3 mt (148,371 lb)	-	72.0 mt (158,724 lb)	72.0 mt (158,724 lb)	
	Hammerhead Sharks ⁴	11.9 mt (26,301 lb)	<2.0 mt (<4,400 lb)	-	11.9 mt (26,301 lb)	11.9 mt (26,301 lb)	
Eastern Gulf of Mexico	Blacktip Sharks	37.7 mt (83,158 lb)	1.5 mt (3,339 lb)	12.6 mt (27,719 lb)	25.1 mt (55,439 lb)	37.7 mt (83,158 lb)	
	Aggregate Large Coastal Sharks ³	85.5 mt (188,593 lb)	36.1 mt (79,506 lb)	-	85.5 mt (188,593 lb)	85.5 mt (188,593 lb)	
	Hammerhead Sharks ⁴	13.4 mt (29,421 lb)	3.4 mt (7,487 lb)	-	13.4 mt (29,421 lb)	13.4 mt (29,421 lb)	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt (428,215 lb)	17.1 mt (37,639 lb)	-	112.6 mt (428,215 lb)	112.6 mt (428,215 lb)	January 1, 2023
	Smoothhound Sharks	504.6 mt (1,112,441 lb)	0.0 mt (0 lb)	168.2 mt (370,814 lb)	336.4 mt (741,627 lb)	504.6 mt (1,112,441 lb)	
Atlantic	Aggregate Large Coastal Sharks	168.9 mt (372,552 lb)	48.0 mt (105,893 lb)	-	168.9 mt (372,552 lb)	168.9 mt (372,552 lb)	
	Hammerhead Sharks ⁴	27.1 mt (59,736 lb)	21.5 mt (47,294 lb)	-	27.1 mt (59,736 lb)	27.1 mt (59,736 lb)	
	Non-Blacknose Small Coastal Sharks	264.1 mt (582,333 lb)	29.8 mt (65,727 lb)	-	264.1 mt (582,333 lb)	264.1 mt (582,333 lb)	
	Blacknose Sharks (South of 34° N. lat. Only)	17.2 mt (3,973,902 lb)	2.8 mt (6,231 lb)	-	17.2 mt (3,973,902 lb)	17.2 mt (3,973,902 lb)	
	Smoothhound Sharks	1,802.6 mt (3,973,902 lb)	176.8 mt (389,804 lb)	600.9 mt (1,324,634 lb)	1,201.7 mt (2,649,268 lb)	1,802.6 mt (3,973,902 lb)	
No Regional Quotas	Non-Sandbar LCS Research	50.0 mt (110,230 lb)	2.1 mt (4,650 lb)	-	50.0 mt (110,230 lb)	50.0 mt (110,230 lb)	January 1, 2023
	Sandbar Shark Research	90.7 mt (199,943 lb)	38.2 mt (84,161 lb)	-	90.7 mt (199,943 lb)	90.7 mt (199,943 lb)	
	Blue Sharks	273.0 mt (601,856 lb)	<1.0 mt (<2,200 lb)	-	273.0 mt (601,856 lb)	273.0 mt (601,856 lb)	
	Porbeagle Sharks	1.7 mt (3,748 lb)	0.0 mt (0 lb)	-	1.7 mt (3,748 lb)	1.7 mt (3,748 lb)	
	Pelagic Sharks Other Than	488.0 mt (1,075,856 lb)	20.6 mt (45,383 lb)	-	488.0 mt (1,075,856 lb)	488.0 mt (1,075,856 lb)	

	Porbeagle or Blue						
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¹ Landings are from January 1, 2022 through July 15, 2022 and are subject to change.

² Underharvest adjustments can only be applied to stocks or management groups that are declared not overfished and have no overfishing occurring. The underharvest adjustments cannot exceed 50 percent of the base quota.

³ NMFS transferred 11.3 mt dw of the aggregate LCS quota from the Gulf of Mexico eastern sub-region to the western sub-region on June 28, 2022 (87 FR 38676; June 29, 2022).

⁴ NMFS transferred 6.8 mt dw of the hammerhead quota from the western Gulf of Mexico sub-region to the Atlantic region on June 28, 2022 (87 FR 38676; June 29, 2022).

Shark Management Groups Where Underharvests Can Be Carried Over

The Gulf of Mexico blacktip shark management group (which is divided between eastern and western sub-regions) and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring. Pursuant to § 635.27(b)(2)(ii), available underharvest (up to 50 percent of the base annual quota) from the 2022 fishing year for these management groups may be added to their respective 2023 base quotas. Reported landings for blacktip sharks and smoothhound sharks have not exceeded their 2022 quotas to date.

Blacktip Sharks: The 2023 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw). As of July 15, 2022, preliminary reported landings for blacktip sharks in the Gulf of Mexico western sub-region were at 61 percent (210.9 mt dw) of their 2022 quota (347.2 mt dw), and in the eastern sub-region were at 4 percent (1.5 mt dw) of their 2022 quota (37.7 mt dw). Consistent with § 635.27(b)(1)(ii)(C), any underharvest would be divided between the two Gulf of Mexico sub-regions based on the percentages that are allocated to each sub-region (*i.e.*, 90.2 percent to the western sub-region and 9.8 percent to the eastern sub-region). As of July 15, 2022, the overall Gulf of Mexico blacktip shark management group is underharvested by 172.5 mt dw (380,303 lb dw). The proposed 2023 adjusted base annual quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (231.5 mt dw annual base quota + 115.7 mt dw 2022 underharvest = 347.2 mt dw 2023 adjusted annual quota) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (25.1 mt dw annual base quota + 12.6 mt dw 2022 underharvest = 37.7 adjusted annual quota).

Smoothhound Sharks: The 2023 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw) and in the Atlantic

region is 1,802.6 mt dw (3,973,902 lb dw). As of July 15, 2022, there have been no smoothhound shark landings in the Gulf of Mexico region, and 10 percent (176.8 mt dw) of their 2022 quota (1,802.6 mt dw) has been landed in the Atlantic region. NMFS proposes to adjust the 2023 Gulf of Mexico and Atlantic smoothhound shark quotas for anticipated underharvests in 2022 to the full extent allowed. The proposed 2023 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2022 underharvest = 504.6 mt dw 2023 adjusted annual quota) and for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2022 underharvest = 1,802.6 mt dw 2023 adjusted annual quota).

Shark Management Groups Where Underharvests Cannot Be Carried Over

Consistent with the current regulations at § 635.27(b)(2)(ii), 2022 underharvests cannot be carried over to the 2023 fishing year for the following stocks or management groups because they are overfished, are experiencing overfishing, or have an unknown status: sandbar shark, aggregated LCS, hammerhead shark, non-blacknose SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups. For these stocks, the 2023 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward.

Aggregate LCS: The 2023 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw) and in the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw). The 2023 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). In a recent action, NMFS transferred 11.3 mt dw of aggregate LCS quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region (87 FR 38676; June 29, 2022). That inseason quota transfer would not impact the proposed actions in this rulemaking. As of July 15, 2022, preliminary reported landings for aggregated LCS

in the western Gulf of Mexico sub-region were 81 percent (67.3 mt dw) of their 2022 quota (72.0 mt dw), in the eastern Gulf of Mexico sub-region were 49 percent (36.1 mt dw) of their 2022 quota (85.5 mt dw), and in the Atlantic region were 28 percent (48.0 mt dw) of their 2022 quota (168.9 mt dw). Reported landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall aggregated LCS quota to date. Given the unknown status of some species in the aggregated LCS complex, the aggregated LCS quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for aggregated LCS in the western and eastern Gulf of Mexico sub-regions and the Atlantic region be equal to their annual base quotas without adjustment.

Hammerhead Sharks: The 2023 proposed commercial quotas for hammerhead sharks in the western Gulf of Mexico sub-region is 11.9 mt dw (26,301 lb dw) and eastern Gulf of Mexico sub-region is 13.4 mt dw (29,421 lb dw). The 2023 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). In a recent action, NMFS transferred 6.8 mt dw of hammerhead shark quota from western Gulf of Mexico sub-region to the Atlantic region (87 FR 38676; June 29, 2022). That inseason quota transfer would not impact the proposed actions in this rulemaking. As of July 15, 2022, preliminary reported landings of hammerhead sharks in the western Gulf of Mexico sub-region were less than 40 percent (<2.0 mt dw) of their 2022 quota (11.9 mt dw), in the eastern Gulf of Mexico sub-region were at 25 percent (3.4 mt dw) of their 2022 quota (13.4 mt dw), and in the Atlantic region were at 63 percent (21.5 mt dw) of their 2022 quota (27.1 mt dw). Reported landings from the Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for hammerhead sharks

in the western and eastern Gulf of Mexico sub-regions and Atlantic region be equal to their annual base quotas without adjustment.

Blacknose Sharks: The 2023 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N. latitude. North of 34° N. latitude, retention, landing, or sale of blacknose sharks is prohibited. As of July 15, 2022, preliminary reported landings of blacknose sharks in the Atlantic region were at 16 percent (2.8 mt dw) of their 2022 quota (17.2 mt dw). Given the overfished status of the blacknose shark, the blacknose shark quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quota for blacknose sharks in the Atlantic region be equal to their annual base quota without adjustment.

Non-Blacknose SCS: The 2023 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (428,215 lb dw) and in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 15, 2022, preliminary reported landings of non-blacknose SCS in the Gulf of Mexico were at 15 percent (17.1 mt dw) of their 2022 quota (112.6 mt dw) and in the Atlantic region were at 11 percent (29.8 mt dw) of their 2022 quota (264.1 mt). Given the unknown status of bonnethead sharks within Atlantic and Gulf of Mexico non-blacknose SCS management groups, underharvests cannot be carried forward. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for non-blacknose SCS in the Gulf of Mexico and Atlantic regions be equal to their annual base quotas without adjustment.

Blue Sharks, Porbeagle Sharks, and Pelagic Sharks (Other Than Porbeagle and Blue Sharks): The 2023 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb

dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. On July 1, 2022, NMFS published a final rule that establishes a shortfin mako shark retention limit of zero in commercial and recreational Atlantic HMS fisheries, consistent with a 2021 ICCAT recommendation (87 FR 39373). Retention of shortfin mako sharks was previously permitted, consistent with existing regulations, as part of the pelagic sharks complex. As of July 15, 2022, there have been no porbeagle shark landings, landings of blue sharks were less than 1 percent (<1.0 mt) of their 2022 quota (273.0 mt), and landings of pelagic sharks (other than porbeagle and blue sharks) were at 4 percent (20.6 mt dw) of their 2022 quota (488.0 mt dw). Given that all of these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward. Based on preliminary estimates of catch rates from previous years, NMFS proposes that the 2023 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment.

Shark Research Fishery: The 2023 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 15, 2022, preliminary reported landings of research LCS were at 4 percent (2.1 mt dw) of their 2022 quota (50.0 mt dw) and sandbar shark reported landings were at 42 percent (38.2 mt dw) of their 2022 quota (90.7 mt dw). Because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Based on preliminary estimates, NMFS proposes that the 2023 quotas in the shark research fishery be equal to their annual base quotas without adjustment.

Proposed Opening Dates and Retention Limits

In proposing the commercial shark fishing season opening dates for all regions and sub-regions, NMFS considered the “Opening Commercial Fishing Season Criteria,” listed at § 635.27(b)(3):

- The available annual quotas for the current fishing season;
- Estimated season length and average weekly catch rates from previous years;
- Length of the season and fishery participation in past years;
- Temporal variation in behavior or biology of target species (*e.g.*, seasonal distribution or abundance);
- Impact of catch rates in one region on another region;
- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and
- Effects of delayed openings.

When analyzing the criteria to open a commercial fishing season, NMFS considers the underharvests of the different management groups in the 2022 fishing year to determine the likely effects of the proposed commercial quotas for 2023 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examines the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities will be provided to fishermen in all areas. Lastly, NMFS assesses the seasonal variation of the different species and management groups, as well as seasonal variation in fishing opportunities. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip in the eastern and western Gulf of Mexico sub-regions and in the Atlantic region, unless NMFS determines otherwise and publishes a notice of inseason adjustment in the **Federal Register** (§ 635.24(a)(2)). NMFS may adjust the retention limit from 0 to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under §§ 635.27 and 635.28.

NMFS also considered the seven “Inseason Trip Limit Adjustment Criteria” listed at § 635.24(a)(8):

- The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports;
- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports;
- The estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season;
- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;
- Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or
- Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

When analyzing the inseason adjustment criteria, NMFS examines landings submitted in dealer reports on a weekly basis and catch rates based upon those dealer reports. NMFS has found that, to date, landings and subsequent quotas have not been exceeded. Given the pattern of landings over previous years, seasonal distribution of the species and management groups have not had an effect on the landings within a region or sub-region.

After considering both sets of criteria in §§ 635.24 and 635.28, NMFS is proposing to open the 2023 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, on January 1, 2023, after the publication of the final rule for this action (Table 2). NMFS proposes to open the season on January 1, 2023, but recognizes that the actual opening date is contingent upon publication of the final rule in the **Federal Register**, and may vary accordingly. NMFS is also proposing to start the 2023 commercial shark fishing season with the commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). The final retention limits could change as a result of public comments and/or updated catch rates and landings information submitted in dealer reports.

Table 2 – Quota Linkages, Season Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group

Region or Sub-Region	Management Group	Quota Linkages ¹	Season Opening Date	Commercial Retention Limits for Directed Shark Limited Access Permit Holders ²
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip
	Aggregate Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip
	Aggregate Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2023	N/A
	Smoothhound Sharks	Not Linked	January 1, 2023	N/A
Atlantic	Aggregate Large Coastal Sharks	Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. Only)	January 1, 2023	N/A
	Blacknose Sharks (South of 34° N. lat. Only)			8 blacknose sharks per vessel per trip ³
	Smoothhound Sharks	Not Linked	January 1, 2023	N/A
No Regional Quotas	Non-Sandbar LCS Research	Linked ⁴	January 1, 2023	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2023	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

¹ Section 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)).

² Inseason adjustments are possible.

³ Applies to Shark Directed and Shark Incidental permit holders.

⁴ Shark research permits “terms and conditions” state that when the individual sandbar or research LCS quotas authorized by the permit are landed, all fishing trips under the permit must stop.

In the eastern and western Gulf of Mexico sub-regions, NMFS proposes opening the fishing season on January 1, 2023, for the aggregated LCS, blacktip shark, and hammerhead shark management groups, with a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip for directed shark permits. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. The season opening criteria listed in § 635.27(b)(3) requires NMFS to consider the length of the season for the different species and/or management groups in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(iii)). In addition, the criteria listed in § 635.24(a)(8) require NMFS to consider the catch rates of the relevant shark species/complexes based on landings submitted in dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at §§ 635.27(b)(3)(v) and 635.24(a)(2) and (a)(8)(ii), (v), and (vi)). Given these requirements, NMFS reviewed landings on a weekly basis for all species and/or management groups and determined that fishermen have been able to participate in the fishery, and landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall aggregated LCS quota to date. For both the eastern and western Gulf of Mexico sub-regions combined, landings submitted in dealer reports received through July 15, 2022, indicate that 66 percent (103.4 mt dw), 55 percent (212.4 mt dw), and 29 percent (5.0 mt dw) of the available aggregated LCS, blacktip shark, and hammerhead shark quotas, respectively, have been harvested. Therefore, for 2023, NMFS is proposing opening both the eastern and western Gulf of Mexico sub-regions with a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on January 1, 2023. The criteria listed in § 635.27(b)(3) consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2022 data indicate that an opening date of January 1 would provide a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)), while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). Because the proposed 2023 quotas and season lengths are the same as they were in 2022, NMFS anticipates that the participation of various fishermen throughout the region, would be similar in 2023 (§ 635.27(b)(3)(ii) and (iii)). Additionally, the January 1 opening date appears to meet the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.27(b)(3)(vi)), because it provides equal fishing opportunities for fishermen to fully utilize the available quotas. Considering the reduced landings in the past 5 years, NMFS proposes to open the aggregated LCS and hammerhead shark management groups for the 2023 fishing year on January 1, 2023, with a retention limit of 55 LCS other than sandbar sharks per vessel per trip. Starting with the highest retention limit available could allow fishermen in the Atlantic region to more fully utilize the available science-based quota. As needed, NMFS may adjust the retention limit throughout the year to ensure equitable fishing opportunities throughout the region and ensure the quota is not exceeded (see the criteria at § 635.24(a)(8)). For example, if the quota is harvested too quickly, NMFS could consider reducing the retention limit as appropriate to ensure enough quota remains until later in the year. NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit.

All of the regional or sub-regional commercial fisheries for shark management

groups would remain open until December 31, 2023, or until NMFS determines that the landings for any shark management group are projected to reach 80 percent of the quota given the realized catch rates and are projected to reach 100 percent of the quota before the end of the fishing season, or until a quota-linked species or management group is closed. If NMFS determines that a non-quota-linked shark species or management group fishery must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.*, eastern Gulf of Mexico blacktip sharks, western Gulf of Mexico blacktip sharks, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register.

For the regional or sub-regional Gulf of Mexico blacktip shark management group(s), regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group(s) before landings have reached, or are projected to reach, 80 percent of the quota after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS; effects on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed (even across fishing years) from the effective date and time of the closure until NMFS publishes in the **Federal Register** a notice that additional quota is available and the season is reopened.

If NMFS determines that a quota-linked species and/or management group must

be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register. In that event, from the effective date and time of the closure until the season is reopened and additional quota is available (via publication of another notice in the **Federal Register**), the fisheries for all quota-linked species and/or management groups will be closed, even across fishing years. The quota-linked species and/or management groups are: Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose sharks and Atlantic non-blacknose SCS south of 34° N. latitude.

Request for Comments

Comments on this proposed rule and on NMFS' determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities (as discussed below in the **Classification** section), may be submitted via www.regulations.gov. NMFS solicits comments on this proposed rule by [*insert date 30 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rulemaking would implement previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments,

and the Environmental Assessment (EA) that accompanied the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010). Impacts have been evaluated and analyzed in Amendment 2 (73 FR 35778; June 24, 2008; corrected 73 FR 40658; July 15, 2008), Amendment 3 (75 FR 30484; June 1, 2010; corrected 75 FR 50715; August 17, 2010), Amendment 5a (78 FR 40318; July 3, 2013), Amendment 6 (80 FR 50073; August 18, 2015), and Amendment 9 (80 FR 73128; November 24, 2015) to the 2006 Consolidated HMS FMP, and in the Final Environmental Impact Statements (FEISs) for Amendments 2, 3, and 5a, and the EAs for Amendments 6 and 9. The final rule for Amendment 2 implemented base quotas and quota adjustment procedures for sandbar shark and non-sandbar LCS species/management groups, and Amendments 3 and 5a implemented base quotas for Gulf of Mexico blacktip shark, aggregated LCS, hammerhead shark, blacknose shark, and non-blacknose SCS management groups and quota transfers for Atlantic sharks. The final rule for Amendment 6 implemented a revised commercial shark retention limit, revised base quotas for sandbar shark and non-blacknose SCS species/management groups, new sub-regional quotas in the Gulf of Mexico region for blacktip sharks, aggregated LCS, and hammerhead sharks, and new management measures for blacknose sharks. The final rule for Amendment 9 implemented management measures, including commercial quotas, for smoothhound sharks in the Atlantic and Gulf of Mexico regions. In 2010, NMFS prepared an EA with the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010) that describes the impact on the human environment that would result from implementation of measures to delay the start date and allow for inseason adjustments. NMFS has determined that the quota adjustments and season opening dates of this proposed rule and the resulting impacts to the human environment are within the scope of the analyses considered in the FEISs and EAs for these amendments, and additional National Environmental Policy Act analysis is not warranted for this proposed rule.

This action is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

This proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries. NMFS would adjust quotas as required or allowable based on any overharvests and/or underharvests from the 2022 fishing year. NMFS has limited flexibility to otherwise modify the quotas in this proposed rule. We note that the impacts of the quotas (and any potential modifications based on overharvests or underharvests from the previous fishing year) were analyzed in previous regulatory flexibility analyses, including the initial regulatory flexibility analysis and the final regulatory flexibility analysis that accompanied the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010). That final rule established the opening dates and quotas for the 2011 fishing season and implemented new adaptive management measures, including flexible opening dates and inseason adjustments to shark trip limits. Consistent with the adaptive management measures implemented in 2011 and based on the most recent data, in this action NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas.

This proposed rule's measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Section 603(b)(3) of the Regulatory Flexibility Act (RFA) requires agencies to provide an estimate of the number of small entities to which the rule would apply. SBA has established size criteria for all major industry sectors in the United States, including fish

harvesters. SBA's regulations include provisions for an agency to develop its own industry-specific size standards after consultation with SBA and to provide an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). In that final rule, effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The 2011 initial regulatory flexibility analysis/final regulatory flexibility analysis analyzed the overall number of limited access permits, which covers all of our active participants today. NMFS still considers all HMS permit holders to be small entities because they have average annual receipts of less than \$11 million for commercial fishing.

As of June 2022, this proposed rule would apply to the approximately 209 directed commercial shark permit holders, 251 incidental commercial shark permit holders, 198 smoothhound shark permit holders, and 70 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 460 directed and incidental commercial shark permit holders, to date this year, 15 permit holders landed sharks in the Gulf of Mexico region, and 53 landed sharks in the Atlantic region. Of the 198 smoothhound shark permit holders, to date this year, 60 permit holders landed smoothhound sharks in the Atlantic region, and only 1 landed smoothhound sharks in the Gulf of Mexico region. As

described below, NMFS has determined that all of these entities are small entities for purposes of the RFA.

Based on the 2022 ex-vessel prices (Table 3), fully harvesting the unadjusted 2023 Atlantic shark commercial base quotas could result in estimated total fleet revenues of \$9,779,528. For adjusted management groups, the following are changes in potential revenues resulting from the adjustments proposed in this rule. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2022. The increase for the western Gulf of Mexico blacktip shark management group could result in a potential \$196,451 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a potential \$34,094 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to underharvest in 2022. This would cause a potential gain in revenue of \$463,518 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of \$1,377,619 for the fleet in the Atlantic region. Since a small business is defined as having annual receipts not in excess of \$11 million, and each individual shark fishing vessel would be its own entity, the total Atlantic shark fishery is within the small entity definition since the total revenue is less than \$12 million (*i.e.*, the estimated total fleet revenues plus the potential gain in revenues due to underharvest). NMFS has also determined that the proposed rule would not likely affect any small governmental jurisdictions.

Table 3 – Average Ex-Vessel Prices per lb dw for Each Shark Management Group, 2022

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.77	-
	Aggregated LCS	\$0.70	-
	Hammerhead Shark	\$0.70	-
Eastern	Blacktip Shark	\$1.23	-

Gulf of Mexico	Aggregated LCS	\$1.03	-
	Hammerhead Shark	\$0.91	-
Gulf of Mexico	Non-Blacknose SCS	\$0.69	-
	Smoothhound Shark	\$1.25	-
Atlantic	Aggregated LCS	\$1.21	-
	Hammerhead Shark	\$0.69	-
	Non-Blacknose SCS	\$1.16	-
	Blacknose Shark	\$1.47	-
	Smoothhound Shark	\$1.04	-
No Region	Shark Research Fishery (Aggregated LCS)	\$0.97	-
	Shark Research Fishery (Sandbar only)	\$1.15	-
	Blue shark	-	-
	Porbeagle shark	-	-
	Other Pelagic sharks	\$1.44	-
All	Shark Fins	-	\$6.04
Atlantic	Shark Fins	-	\$1.80
GOM	Shark Fins	-	\$8.58

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated HMS FMP and its Amendments 2, 3, 5a, 6, and 9. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities from adjustments such as those contemplated in this action are expected to be minimal. In accordance with the 2006 Consolidated HMS FMP, as amended, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests. For the adjustments included in this proposed rule, NMFS concludes that the effects this proposed rule would have on small entities would be minimal.

In conclusion, although this proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries, this proposed rule does not change the regulations and management measures currently in place that govern commercial shark fishing in Federal waters of the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Furthermore, as described above, this action is not expected to affect the amount of sharks caught and sold or result in any change in the ex-vessel revenues those fishermen

could expect, because, for the most part, the proposed quotas, retention limits (except for shortfin mako shark), and opening dates are the same as those for last year. In addition, as described above, for the areas in which this action proposes adjustments, the increases in revenues for the participating small entities are minimal. Therefore, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS invites comments from the public on the information in this determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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